IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6156 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G.S.R.T. CORPORATION

Versus

PRADIPKUMAR J. SORATHIYA

Appearance:

1. Special Civil Application No. 6156 of 1991

MR HARDIK C RAWAL for Petitioner No. 1

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner and Mr. Ajmera, learned advocate for the respondent workman. By way of this petition, the

petitioner has challenged the award made by the labour court, Bhavnagar in Reference (LCB) No. 628 of 1987 dated 15th September, 1990 whereby the labour court has directed the petitioner to reinstate the respondent workman with continuity of service and to pay thirty percent of the back wages for the intervening period.

During the course of hearing, learned advocate Mr. Raval has submitted that the respondent was working as a Badli driver with effect from 20th January, 1982 and during the course of his employment, he had committed two misconduct, at one point of time, an accident was caused on 16th March, 1986 and another misconduct was to the effect that he had not allowed the conductor to recover the luggage charge from the passenger on 4th January, 1986. According to him, in the accident, one cyclist had expired, no doubt, in criminal case, the respondent workman was acquitted. He has, therefore, submitted that some reasonable opportunity was given to the respondent workman before terminating his service. He has submitted that in view of the finding of the labour court that no departmental inquiry has been initiated against the respondent before terminating his services, the respondent workman can be reinstated in service but in that event, the respondent workman is not entitled to any back wages. According to him, grant of any back wages would amount to premium to a Badli Driver who has committed two misconducts as aforesaid, one of causing accident and the next one is that of not allowing the conductor to recover luggage charges from the passenger. He has submitted that while issuing rule, this court has stayed the award of the labour court in so far as it relates to back wages and no stay has been granted in so far as it relates to reinstatement of the workman concerned. He has therefore, submitted that the award of the labour court is required to be quashed and set aside in so far as it relates to back wages part. He has made it clear that since no stay has been granted against the award for reinstatement of the respondent workman, naturally, the workman has been reinstated in service.

Learned advocate Mr. Ajmera has submitted that since the reasonable opportunity was not given to the respondent workman before terminating his services, the respondent workman is entitled for reinstatement with full wages. He has also submitted that the labour court has given cogent reasons for grant of back wages and, therefore, that part of the award made by the labour court should not be disturbed.

I have considered the submissions made by the

learned advocates for the parties. I have also perused the impugned award made by the labour court. The fact would remain that the respondent was a Badli Driver and during the course of his employment, he has committed two alleged misconducts for which some show cause notice was given and reply thereto was taken into account but, no doubt, detailed departmental inquiry has not been initiated against the respondent workman before terminating his services and therefore, on that ground, the order of termination of his services has been set aside by the labour court. The labour court has considered the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 and has come to the conclusion that the action of termination would amount to retrenchment. However, according to my opinion, the labour court has not considered the most important aspect of the matter that two misconducts were committed by the respondent workman as alleged and the order of termination was set aside only on technical ground that no departmental inquiry was initiated as required to be held as per the decision reported in 1993 (1) GLR 442. According to my opinion that itself would not give power to the labour court to grant the back wages for the interim period. Further, there is no specific discussion made as to how and why the respondent workman is entitled to 30 per cent of the back wages for the intervening period. The labour court was aware that recently the respondent has met with accident wherein one cyclist has expired and yet, it has granted the back wages to the extent of 30 per cent while directing reinstatement of the workman. Therefore, according to my opinion, considering the technical breach on the part of the petitioner corporation in not initiating the departmental inquiry, according to my opinion, the back wages ought not to have been awarded by the labour court while directing reinstatement of the respondent workman. I am also of the view that in such a situation, grant of back wages would amount to grant of premium to a wrong doer. Therefore, according to my opinion, the award made by the labour court is required to be modified in so far as it relates to grant of back wages in favour of the respondent workman while directing his reinstatement with continuity of service.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in Reference No. 628 of 1987 dated 15th September, 1990 is hereby quashed and set aside in so far as it relates to back wages to the respondent workman while directing his reinstatement in service with continuity of service. It is, however, clarified that the award has

not been disturbed by this Court in so far as it relates to reinstatement of the respondent workman. Rule is accordingly made absolute with no order as to costs.

17.1.2002. (H.K. Rathod,J.)

Vyas